

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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Petition to Investigate the Non-Impairment	)	
Claims of Illinois Bell Telephone Company	)	Docket No. 05-_____
Regarding Wire Centers	)	

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**PETITION TO OPEN PROCEEDING**

NOW COME XO Communications Services, Inc., CIMCO Communications, Inc., and Mpower Communications Corp., d/b/a Mpower Communications of Illinois, (“Petitioners”) and pursuant to Section 10-101 of the Public Utilities Act, 220 ILCS 5/10-101, petition the Commission to open an investigation of the wire centers that SBC alleges are non-impaired pursuant to the Federal Communications Commission’s (“FCC’s”) Triennial Review Remand Order (“*TRRO*”).<sup>1</sup> In support of this petition, Petitioners state as follows:

1. Pursuant to Section 4-101 of the PUA (220 ILCS 5/4-101), this Commission has the authority to supervise all public utilities, including telecommunications carriers, and to monitor their compliance with the PUA, any other law, and the orders of the Commission. This Commission also has the power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of the Illinois PUA. 220 ILCS 5/10-101.
2. On February 4, 2005, the FCC issued the *TRRO*.

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<sup>1</sup> *In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313 and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338. (TRO Remand Order), rel’d February 4, 2005.*

3. On February 22, 2005, SBC issued Accessible Letters asserting that certain wire centers, including a number of wire centers located in Illinois, met the various non-impairment tests set forth in the *TRRO*. (See Exhibit 1)
4. On September 9, 2005, SBC submitted a letter to the FCC announcing that SBC had “re-surveyed” a number of wire centers and conducted a “more recent review” as to which wire centers met the *TRRO*’s non-impairment tests “as of February 2005.” In doing so, SBC asserts that various wire centers “were left off of SBC’s list of non-impaired wire centers . . .” (See Exhibit 2 to this Petition).
5. As a result of its so-called “re-survey” and “more recent review,” SBC added four (4) additional Illinois wire centers to its Tier 2 classification. (SBC’s September 9, 2005 letter at Attachment A.)<sup>2</sup> As set forth in the *TRRO* rules, if SBC’s reclassification is correct, CLECs are not entitled to DS1 and DS3 dedicated transport between these two wire centers and any other wire centers on the list.
6. These increases in the number of non-impaired wire centers were driven, in large part, if not exclusively, by SBC’s new re-calculation of the number of alleged fiber-based collocators located within each of these wire centers. For example, Attachment F to SBC’s September 9, 2005 letter, lists four (4) Illinois wire centers that SBC had earlier classified as having less than three fiber-based collocators. After its “re-survey,” SBC now claims each of these

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<sup>2</sup> The Attachments to SBC’s September 9, 2005 letter are set forth as part of Exhibit 2 to this Petition. The lists of wire centers have been redacted to include only those pages listing Illinois wire centers.

wire centers has three or more fiber-based collocators. On September 12, 2005, SBC issued an Accessible Letter (CLECALL05-140, attached as Exhibit 3) adding to and modifying its original list of non-impaired wire centers based on its September 9, 2005 letter filed with the FCC. Through its “re-survey” and the associated Accessible Letter, SBC has substantially added to the number of Illinois wire centers it holds out as being non-impaired as of February 2005. In doing so SBC continues to rely on its own interpretations of the definitions of a “line” and a “fiber based collocator” as used in the *TRRO*.

7. Although this Commission has not yet delved into SBC’s counting methodology, the Michigan Public Service Commission (“MPSC”) has recently done so.<sup>3</sup> The result of its investigation shows that SBC’s claims must be examined closely. The MPSC recently rejected SBC’s counting methodology and application of the definitions of a “business line” and a “fiber based collocator” in determining non-impaired wire centers pursuant to the *TRRO*. In the September 20, 2005 order addressing SBC’s challenge to Covad’s self-certification in the Dearborn/Fairborn wire center, the MPSC specifically rejected SBC’s efforts to count residential lines, including residential UNE-L lines, as business lines under the non-impairment tests established by the *TRRO*. (Exhibit 4, MPSC Order at pages 6-7.)

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<sup>3</sup> *In the matter, on the Commission’s own motion, to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters issued by SBC Michigan and Verizon*, MPSC Case No. U-14447, Order September 20, 2005 (See Exhibit 4). The Michigan case was initiated pursuant to the dispute resolution procedures adopted in the Michigan Commission’s earlier order of March 29, 2005 in docket U-14447. The Michigan Commission understood that it was necessary to develop a process for self-certification. Although the process developed in Michigan is a good start, this Commission should develop a process consistent with this Petition.

8. The MPSC also rejected SBC's efforts to count CLECs as fiber-based collocators who do not have fiber facilities that enter and exit their collocations . In the Dearborn/Freeborn wire center, the Commission specifically rejected SBC's efforts to count a CLEC that did not have its own separate fiber as a fiber-based collocator. Instead, this CLEC was cross-connected with another CLEC, which SBC had already included in its fiber-based collocator count. As a result, the MPSC specifically rejected SBC's effort to count this CLEC as a fiber-based collocator. (Exhibit 4, MPSC Order at pages 9-11.)
9. On October 31, 2005, the Federal Communications Commission approved the mergers of SBC Communications Inc. with AT&T Corp. and Verizon Communications Inc. with MCI, Inc. Although a written order has not yet been issued, according to the press release issued by the FCC and an *ex parte* letter SBC filed with the FCC, the conditions of the merger approvals included the applicants' commitment to a one-time recalculation to exclude AT&T collocation arrangements established in SBC's region that were identified by SBC as fiber based in wire centers where SBC claims there is no impairment pursuant to the UNE triggers in the *TRRO*. Thus, SBC will have to recalculate its non-impaired claims consistent with the FCC order.
10. The Commission must open a proceeding to ensure that SBC does not improperly implement the non-impairment standards established in the *TRRO* such that they adversely impact the competitive market in Illinois.

11. Petitioners request a mechanism to review SBC's claims of non-impairment and to determine certain important definitions. First, the Commission should investigate SBC's application of "line" and "fiber-based collocators" for the purposes of the *TRRO* rules addressing non-impaired wire centers. Second, the Commission should establish rules and procedures for CLECs reviewing the data supporting SBC's list of alleged non-impaired wire centers. Although Petitioners can self-certify, the process would be much more efficient if CLECs had access to the data that SBC used to determine the non-impaired wire center list. This is data to which full access is only available to SBC. The Commission needs to make the underlying data for all wire centers SBC Illinois has declared non-impaired available for meaningful inspection. As discussed below, SBC has placed significant limitations on access to data it relies upon in listing a wire center non-impaired. These limitations are so severe that they prevent CLEC subject matter experts access to the data to determine if SBC's listings are accurate. CLEC review of the number of lines and fiber-based collocators and related information is contemplated by the *TRRO*, which allows CLECs to make self-certifications after a reasonably diligent inquiry. (*TRRO* at ¶234.) If CLECs do not have this data available to them, their ability to make a reasonably diligent inquiry is severely hampered. Thus, the Commission should require SBC to file its supporting data for each wire center that SBC alleges is non-impaired for either high capacity loops and/or dedicated transport. The data supplied by SBC should contain information deemed reasonably necessary by the Commission to assist in

identifying non-impaired offices. Subject to the terms of a protective order, the CLECs should be allowed to review this data.

12. The Petitioners' request is similar to a proceeding that SBC has already initiated in Texas. On May 2, 2005, the Public Utility Commission of Texas noticed the parties to the Triennial Review Order ("TRO") proceeding that it was about to hold a prehearing conference at which "the parties will be asked whether a new case should be opened to address the designation of wire centers by the incumbent local exchange carriers (ILECs) and if so, what form such a case should take." On June 30, 2005, before the Commission could open a proceeding, SBC without prior notification to the CLECs, filed a "Complaint For Post Interconnection Agreement Dispute Resolution Regarding UNE Declassification by Wire Center" against all of the CLECs with Texas Interconnection Agreements. (See Exhibit 5) As part of SBC's complaint it provided a "Texas PUC TRRO 'Wire Center Dispute' SBC Texas Issues List". The list of issues provided by SBC, in its own complaint, are essentially the issues the Petitioners seek here. Subsequent to SBC's complaint, the Texas Commission opened a docket to resolve the issues outlined by SBC, and numerous additional issues brought forth by the CLECs. The Texas proceeding is ongoing and is just beginning the discovery, testimony and briefing stages.

13. In a related matter, BellSouth Telecommunications, Inc. has addressed this issue by agreeing to an open and cooperative process with the CLECs.<sup>4</sup> In the nine (9) BellSouth states, BellSouth and the CLEC coalition have established a process for the review of BellSouth's wire center classifications similar to the process requested in this petition. The process includes a method for ensuring protection of confidential matter under non-disclosure agreements and/or protective orders from the applicable state commission. This agreed process requires that, by certain dates:
- a. BellSouth provides CLEC counsel the complete set of responses to BellSouth's various discovery requests to CLECs requesting, from each, verification of its status as a fiber-based collocater in BellSouth wire centers;
  - b. CLECs and BellSouth will exchange wire center classification lists;
  - c. CLECs and BellSouth meet by telephone to identify a list of disputed wire centers by state based on differences in the number of fiber-based collocators;
  - d. CLECs and BellSouth file jointly with each Commission the list of disputed wire centers with a statement explaining each dispute;
  - e. CLECs and BellSouth request that the appropriate state commission decide whether to hold a mini-hearing and/or delegate to staff mediation the resolution of each wire center dispute. (BellSouth has further agreed

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<sup>4</sup> In fact, that process has worked in practice. Attached as Exhibit 6 is the result of the agreed upon process as implemented in Tennessee.

that, where necessary, it will permit visual inspection by one CLEC representative and one staff member.); and

f. for purposes of resolving FBC-related issues in the pending Generic Dockets, CLECs, upon request from BellSouth, provide accurate information to BellSouth to verify the accuracy of BellSouth's listed wire centers, including identification of those wire centers, not identified by BellSouth, in which the CLEC qualifies as a FBC.

14. SBC has provided XO with a list of the wire centers in which SBC has counted XO as a fiber based collocator. XO's initial review of SBC's list identified numerous errors regarding XO. SBC has listed wire centers in which XO's collocation is not fiber based as contemplated by the FCC. SBC has also listed XO as a fiber-based collocator in wire centers in which XO has no record of a collocation at all. If SBC has made similar errors regarding the classification of other CLECs' collocations as fiber based, this may have a substantial effect on SBC's non-impaired wire center list. The Commission must review SBC's methodology for counting fiber-based collocators and seek input from the CLECs in that review process.
15. The Commission has issued its order in the *TRRO* Arbitration proceeding, ICC docket No. 05-0442. While that order addresses some issues relative to the non-impairment analysis and the effect of inclusion of affiliate entities (See Docket 05-0442 Order at 34<sup>5</sup>), the order does not address how the parties

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<sup>5</sup> *Access One, Inc., et al., Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company d/b/a SBC Illinois*



should qualify the underlying data SBC uses to make determinations of the number of collocators and line counts.

16. The number and name of the fiber-based collocators, and the detailed information behind the line count in each office is ONLY available to SBC. The lack of access to SBC's data only encourages litigation over each and every wire center listed on SBC's non-impaired wire center list, because, absent the Commission opening an investigation, litigation will be the only way to gain meaningful access to underlying data to determine the validity of SBC's classifications. In fact, reasonable access to the information relied upon by SBC may actually resolve disputes and prevent the need to litigate issues of non-impairment before the Commission.
17. When SBC lists a wire center as being non-impaired for either high-capacity loops or dedicated transport, it has a chilling impact on competition. The availability of high-capacity loops is essential for CLECs seeking to provide services to business customers. In addition, the availability of dedicated transport at cost-based rates (as opposed to special access tariff rates) is essential for CLECs that are planning and building facilities-based networks. Thus, SBC's listing in an Accessible Letter that a wire center is non-impaired is no trivial matter. SBC's listing of a wire center as being non-impaired directly impacts the willingness of CLECs to invest resources in a wire center

and, thus, adversely impacts competition and will lead to higher customer rates in Illinois.<sup>6</sup>

18. Petitioners request that the Commission open an investigation to determine the proper application of line count and “fiber-based collocater,” as defined by the FCC. 47 CFR 51.5. The Commission should further require SBC to recalculate its list of nonimpaired facilities based on those definitions and provide that list to Illinois CLECs.
19. Further, SBC should be required to file with this Commission its supporting data for each wire center it asserts is non-impaired. Filing the supporting data with this Commission is important because currently SBC only makes information as to SBC’s basis for listing a wire center as being non-impaired available on an extraordinarily narrow basis. SBC only allows attorneys to review the data and they are not even allowed to photocopy the information. And the data which SBC allows these attorneys to review does not contain all of the data that CLECs would request in discovery in proceedings in which SBC challenges a CLEC’s self certification. The petitioners cannot help but wonder why SBC is so reluctant to provide this data. Finally, SBC’s

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<sup>6</sup> If a wire center is wrongly listed, a CLEC with an existing facility will need to (1) engage in an expansive legal challenge to the classification, or (2) explore more expensive ILEC sources for the facilities. Further, CLECs which currently do not have a collocation within a given wire center are not likely to make the significant investment to build a collocation in a wire center where SBC disputes the CLEC’s access to either high capacity loops (which are necessary to serve business customers) or cost-based dedicated transport necessary to support the CLEC’s network.

supporting data should also include the names of the CLECs that SBC claims are fiber-based collocators.<sup>7</sup>

20. This approach is reasonable because there is simply no need for SBC and the CLECs to re-litigate the Commission's determinations regarding what constitutes a "line" and what constitutes a "fiber-based collocator" in each of the remaining wire centers that SBC's asserts are non-impaired.
21. As discussed above, CLEC review of the number of lines and fiber-based collocators and related information is contemplated by the *TRRO*, which allows CLECs to self-certify after a reasonably diligent inquiry. (*TRRO* at ¶234.) While the *TRRO* requires an incumbent provider to provide an element pending resolution of a dispute as to whether a wire center is non-impaired, the *TRRO* does not limit the method in which a state Commission implements the *TRRO* to either avoid such disputes or resolves them. In fact, the *TRRO* specifically encourages the state commissions to be pro-active in monitoring the incumbent and competitive providers' implementation of the *TRRO*. *Id.* at ¶233.
22. In order to ensure that the *TRRO* is properly implemented in Illinois and to avoid unnecessary disputes, this Commission should grant the relief requested by this Petition.

WHEREFORE, Petitioners respectfully request that this Commission:

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<sup>7</sup> The confidential nature of the names of collocators is exaggerated. If a CLEC has a collocation, or otherwise gains access to a wire center, it would likely find the names of the other collocators visible on their collocation cage.

- A) Open an investigation into SBC's application of "line" and a "fiber-based collocater" for the purposes of determining nonimpairment;
- B) Subject to the terms of the protective order, require SBC to file its supporting data for each wire center that SBC asserts is non-impaired for either high capacity loops or dedicated transport;
- C) Require that the data to be filed with the Commission should be consistent with this Commission's application of the FCC's nonimpairment rules;
- D) Require a cooperative process, such as that being utilized in the BellSouth territory, that subject to a protective order, allows CLECs to review this data and requires SBC and the CLECs to jointly develop the list of wire centers which they agree are non-impaired and those which need Commission review and determination.

Respectfully submitted,

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Thomas H. Rowland  
Stephen J. Moore  
Kevin D. Rhoda  
Rowland & Moore LLP  
200 West Superior Street  
Suite 400  
Chicago, Illinois 60610

Counsel for XO Communications Services, Inc.,  
CIMCO Communications, Inc. and Mpower  
Communications Corp., d/b/a Mpower  
Communications of Illinois